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June 10, 1994

VIA FEDERAL EXPRESS

William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Mail Stop Code 1170  
Washington, DC 20554

Re: Petition for Reconsideration of PP Docket No. 93-253

Dear Mr. Caton:

Please find enclosed in original and four (4) copies a Petition for Reconsideration of the Commission's action relative to the Third Report and Order as well as the Fourth Report and Order regarding the implementation of Section 309(j) of the Communications Act--Competitive Bidding, in PP Docket No. 93-253 released on May 10, 1994.

Should the Commission have any questions concerning these matters, please contact the undersigned.

Sincerely,

  
Richard L. Vega, Jr.  
President

RLVjr/tt  
Enc.

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

**In the Matter of:**

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )  
)

PP Docket No. 93-253

JUN 13 1994

FCC MAIL ROOM

To the Commission

**PETITION FOR RECONSIDERATION**

Phase One Communications, Inc., ("Phase One"), a telecommunications consulting firm, by its President, Richard L. Vega, Jr., and pursuant to 47 C.F.R. Section 1.106, respectfully submits this Petition for Reconsideration in response to the Third Report and Order as well as the Fourth Report and Order relative to the implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253 (collectively referred to as the "Orders"), both released by the Federal Communications Commission ("FCC"), on May 10, 1994. In support thereof, the following is stated:

I. **Introduction**

Pursuant to Section 309(j)(3) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151-713 (the "Communications Act"), the FCC has express authority to employ competitive bidding procedures to choose among all **MUTUALLY EXCLUSIVE** (emphasis added) applications for initial licenses. The Congressional policy objective for allowing the FCC authority to implement competitive bidding was to promote "economic opportunity and competition...by disseminating licenses among a wide variety of applicants, including small businesses...." By adopting the competitive bidding process

as a method for issuing licenses in mutually exclusive cases, only "serious" applicants would be awarded radio spectrum.

In response to the Congressional mandate to apply the new section of the Communications Act, the FCC has created the most complex, confusing and contested rules in the history of the Communications Act. Many commentators feel that the Section 309(j) addition to the Communications Act was designed to provide spectrum to the "deep pocket" players who could afford to buy licenses. Nonetheless, as stated in its Comments, Phase One fully supports the concept of spectrum auctions, where appropriate, and the FCC's efforts to bring forth telecommunications services to the public in an efficient and expedited fashion thereby increasing administrative efficiency while simultaneously reducing the federal deficit.<sup>1</sup> However, there are several issues relating to the Orders that require further consideration.

## II. Argument

### A. The FCC Has Not Established That Mutual Exclusivity Exists.

The Communications Act explicitly permits the FCC to employ competitive bidding procedures only (emphasis added) in those instances where mutual exclusivity exists.<sup>2</sup> Since the FCC has not yet accepted applications for the services designated by the Orders, the FCC is prohibited from establishing specific auction dates until it has determined that a particular application is in fact mutually exclusive with another. As such, Phase One requests that the FCC delay establishing auction dates

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<sup>1</sup>Comments, Phase One, Page 1, Paragraph 1.

<sup>2</sup>Section 309(j)(1) of the Communications Act.

until such time that mutual exclusivity has been identified. The FCC must first notify each qualified applicant of its application processing status in advance of scheduling auctions to allow those applicants proper time to fully analyze auction strategies and to allow each applicant an opportunity to "size up" the competition. Moreover, a procedure which first accepts applications for filing, determines mutual exclusivity and then establishes auction dates would provide all non-mutually exclusive applications a means of rapid advancement to the final licensing stage bringing forth much needed service to the public. Until the FCC has established that applications filed in response to a particular window notice are mutually exclusive, the FCC must withhold from designating auction dates.

B. Immediate Auction Scheduling Policy Provides No Opportunity to Properly Plan Auction Strategy.

In each of the Orders and subsequent notices regarding the processing of applications for PCS and IVDS, the FCC established an extraordinarily short period between the time applications are due and the date auctions are conducted.<sup>3</sup> Both large and small entities seeking to participate will be overwhelmingly burdened in their efforts to engineer the appropriate application and design their auction strategy thereby reducing significantly the number of qualified entities obtaining licenses. The FCC's public service mechanisms established to assist in the auction planning process are unrealistic, faulty and unresponsive. For example, pursuant to FCC Public Notice dated May 9, 1994, the FCC claims to have established an "auctions hot line" which is

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<sup>3</sup>Report No. AUC-94-01, Auction No. 1; released May 23, 1994 and Report No. ABC-94-02, Auction No. 2, released May 23, 1994.

"accessible 24 hours a day, 7 days a week, including holidays..." to help prospective applicants with auction questions. However, the service is not available 24 hours per day as a recorded voice message states that it is only active during normal business hours. Entities, particularly small staffed businesses that typically work around the clock, are being cheated simply because there are no resources to track the auction process continuously. Additionally, utilization of Tradewinds International, Inc. as the source for "bidders' packages", which includes the all-important initial application, is seriously insane. Phase One and others have still not received bidders' packages weeks after they were ordered. These packages must be available months in advance of the Notice of Filing Requirements for all services. Finally, on June 2, 1994, only days before the first applications are due, the FCC released Public Notice, **FCC TO HOLD SPECTRUM AUCTIONS FOR NEW WIRELESS SERVICES INFORMATIONAL SEMINAR JUNE 6, 1994 TO DISCUSS THE AUCTION SCHEME**, a nice gesture but unfair to the majority of non-Washington, D.C. based communications entities that only had a few hours' notice to prepare for the meeting. Because the auction process is separate from the application filing process, the FCC must allow sufficient time for a designated "mutually exclusive" applicant to prepare its bid strategy and to participate in any seminars.

**C. The Numerous Petitions for Reconsideration or Partial Reconsideration to the Second Report and Order Must be Addressed.**

The adoption of the Communications Act as amended and creation of PP Docket No. 93-253, has resulted in a flood of petitions for reconsideration of which some raise serious questions regarding the competitive bidding process and the FCC's intent on providing a fair and equal opportunity to all those who participate. As a party to this proceeding, Phase One has had an opportunity to review many of the petitions for reconsideration or partial reconsideration filed with the FCC. It is clear that even the nation's largest, most respected and well-represented communications companies remain confused and concerned with respect to certain elements of the competitive bidding process. As such, Phase one believes that in the public's interest the FCC is obligated to suspend its designated auction dates until each of the petitions has been properly addressed. However, Phase One encourages the FCC to continue moving forward with initial application filing schedules; a required phase to determine if mutual exclusivity exists.

**D. Tradewinds International, Inc. Must Be Prohibited From Promoting All Potential Auctionable Communication Services.**

In fairness to the communications industry, the public and the FCC, Tradewinds International, Inc. must be prevented from promoting FCC auctions since it amounts to false and misleading advertisement. As previously stated, without mutual exclusivity there will be no auctions. While this practice is deplorable, it also raises serious conflict of interest questions. It is presumed that this FCC auction contractor has

obtained the exclusive contract to conduct all auctions between those applicants determined to be mutually exclusive and perhaps awarded additional fees if auctions are actually held. Again, to this date, the necessity to conduct auctions has not been established since mutual exclusivity has not been confirmed. Hence, the numerous half-page advertisements placed in The Wall Street Journal are inappropriate and conflict with the FCC's intentions that only qualified, well-deserved companies obtain FCC licenses.

### III. Conclusion

To properly implement the auction process, the FCC is obligated to first accept applications for filing, determine mutual exclusivity, propose suitable bidding procedures, and finally establish specific auction dates only for those applications deemed mutually exclusive. This will promote competition amongst the greatest number of entities and ensure a fair and adequate bid will be placed on the specific service. Additionally, all entrants will therefore have an opportunity to study, plan and implement the appropriate auction strategy which will be required by most participating entities. Nonetheless, the FCC must first address those issues raised under the numerous petitions for reconsideration before it proceeds in the establishment of auction dates, and finally, the FCC must insist that its auction contractor, Tradewinds International, Inc., cease immediately from continuing the practice of promoting FCC auctions when, in fact, the necessity for auctions have not been established since mutual exclusivity has not been determined.

WHEREFORE, Phase One Communications, Inc. respectfully requests that the FCC reconsider those issues discussed relative to the Third Report and Order as well as the Fourth Report and Order regarding the implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253.

Respectfully submitted,

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Dated June 8, 1994



CERTIFICATE OF SERVICE

I, Lisa Topping, due hereby certify that copies of the foregoing Petition for Reconsideration have been served by United States mail, postage prepaid, this 10th day of June, 1994 upon all of the parties listed in the proceeding.

  
\_\_\_\_\_  
Lisa Topping

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